

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JEAN-CLAUDE VANDEVOORDE

Appeal No. 2006-0826
Application No. 09/959,065

ON BRIEF

Before KIMLIN, GARRIS and KRATZ, Administrative Patent Judges.
KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-7.

Claim 1 is illustrative:

1. A mechanism for processing items continuously fed on a base material, in order to perform an operation on each item, in which each item is provided with an accurately positioned bar code, said mechanism comprising:

a feed device unreeling the base material;

a processing device for performing the operation on the items;

a reader positioned at a location in which the bar codes of the items are located, said reader being configured for detecting a particular edge of the bar code carried by each item, said reader further being configured for creating a read signal corresponding to a relative position of the detected bar code;

a data source containing data signal information relating to the bar codes; and

a control circuit configured for receiving the read signals and the data signals and then comparing the read signals and the data signals, said control circuit emitting control signals for said processing device based on said comparison of the signals.

The examiner relies upon the following reference in the rejection of the appealed claims:

Wathieu	5,765,460	Jun. 16, 1998
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Appellant's claimed invention is directed to a mechanism for items, such as labels, that are fed on a base material, e.g., a continuously moving web. The item is provided with a bar code that is read by a reader which sends a signal corresponding to the position of the bar code to a control circuit. The control circuit also receives data signals from a data source containing information relating to the bar code on the item. The control circuit compares the signals from the bar code and the data source and sends a control signal to a processing device, such as a cutter, which operates on the item.

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Appealed claims 1-7 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Wathieu.

We have thoroughly reviewed the respective positions advanced by appellant and the examiner. In so doing, we find ourselves in agreement with the appellant that the examiner has not made out a prima facie case of anticipation for the claimed subject matter under 35 U.S.C. § 102. Accordingly, we will not sustain the examiner's rejection.

Wathieu, like appellant, discloses a mechanism for processing items, containing a bar code, continuously fed on a base material in order to perform an operation, such as cutting, on the items. The mechanism of Wathieu also comprises a reader, such as a photocell, for detecting the edge of a bar code and creating a read signal corresponding to the relative position of the bar code. Wathieu also discloses a controller which receives the signals from the reader, as well as data signals relating to the position of the bar code and the leading edge of the sheet. However, as emphasized by appellant, critically absent in the mechanism described by Wathieu is a control circuit which

compares the read signals from the bar code and the data signals relating to the bar codes. As explained by appellant "though the photocell detection signal does prompt ('trigger') controller 80 into its override mode, no signal provided by a photocell 128 to controller 80 serves as an operand in any comparison operation or comparator facility of controller 80" (page 2 of reply brief, second paragraph). We do not subscribe to the examiner's position that the reporting of photocell 128 to the controller and subsequent adjustment by the controller of the cutting blade position based on programmed data "is a comparison operation and meets the broadest reasonable interpretation of the claims" (page 6 of answer, second paragraph). The broadest interpretation of claim 1 on appeal still requires a control circuit that is configured for comparing the read signals and the data signals, and we concur with appellant that Wathieu provides no description of a controller that is configured for comparing these distinct signals.

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Based on the present record, it is our judgment that the examiner has failed to point to any description in Wathieu of a controller configured to perform the comparing function recited in the appealed claims. Since such a description is necessary for supporting a rejection under 35 U.S.C. § 102, we are constrained to reverse the examiner's rejection.

REVERSED

EDWARD C. KIMLIN)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
BRADLEY R. GARRIS)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
)	
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)	
PETER F. KRATZ)	
Administrative Patent Judge)	

ECK/hh

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